IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	Case No.: 3-09CV0298-N
STANFORD INTERNATIONAL BANK, LTD, ET AL.	§	
Defendants	§	

OPPOSITION TO RECEIVER'S MOTION FOR
APPROVAL OF INTERIM DISTRIBUTION PLAN

Curtis, Mallet-Prevost, Colt & Mosle LLP ("Curtis"), *pro se*, files this opposition and accompanying Affidavit of Michael Graif to the Receiver's Motion for Approval of Interim Distribution Plan (the "Motion") [D.E. 1766]. The Receiver inappropriately seeks to elevate one class of alleged victims of the Stanford Ponzi scheme above another class of victims, and to distribute funds to this single preferred class to the exclusion of all others. While it appears that many of the alleged "victims" for whom the Receiver seeks preferential treatment are not "victims" at all, at a minimum, there is no reason to give these alleged victims preferential treatment over other victims whose claims are at least as compelling, if not more so. We respectfully ask that the Court deny the Receiver's Motion. In the alternative, the Court should allow discovery and conduct an evidentiary hearing to test the bona fides of the claims of the alleged victims.

BACKGROUND

Pursuant to a written engagement agreement (Ex. A to the Aff. of M. Graif), and at Stanford Financial Group Company's ("Stanford Financial") request and with its knowledge, Curtis provided legal services to Stanford Financial and incurred expenses in connection with performing those services. (Aff. of M. Graif at ¶ 3.) In brief, Stanford Financial was sued by Stanford University in the U.S. District Court for the Northern District of California on claims of trademark infringement. See The Board of Trustees of the Leland Stanford Junior Univ. v. Stanford Fin. Group Co., No. C-08-04950 CRC (N.D. Cal.). Stanford University contended that the use by Stanford Financial of the name "Stanford" created a likelihood of confusion and should be enjoined. (Aff. of M. Graif at ¶ 5.) Curtis was retained by Stanford Financial's in-house counsel, and represented Stanford Financial in that litigation. (Id. at ¶ 6.) Curtis also performed ancillary legal services for Stanford Financial involving intellectual property issues. (Id. at ¶ 7.) At no time did Curtis have any involvement with the financial or investment aspects of Stanford Financial's business. Curtis was not called upon, had no reason to, and in fact never scrutinized Stanford Financial's investment products. (Id. at ¶ 9.)

Stanford Financial has not paid Curtis the legal fees and expenses incurred in connection with that representation. Curtis is currently owed more than $1,442,115.60 in legal fees and expenses (plus interest).

On January 22, 2010, Curtis filed a timely claim with the Receiver on the Receiver's website. (Claim number: 94c39fa525ae4fab91e25fd717682b25.) On August 28, 2012, Curtis filed two timely proofs of claim in support of its claims. Its claims were assigned claim numbers: STANFORD-1012207-9; STANFORD-1012208-7; STANFORD-1012209-5; STANFORD-1012210-9; STANFORD-1012211-7; and STANFORD-1012212-5.

In the Receiver's Motion, the Receiver proposes to make a distribution to only certain alleged victims ("Investor CD Claimants") who are supposedly more numerous than other victims and whose claims are therefore somehow deemed more deserving than those of other victims. (Mot. at 1.) The Motion also asserts, without basis or any factual support, that the payment should go exclusively to the Investor CD Claimants because "the interim distribution should direct resources where they are needed most[.]" (Mot. at 25.) Under the proposed interim distribution plan, these preferred recipients will receive a distribution, while all other victims – including service providers such as Curtis – will receive nothing. Indeed, the Motion indicates that general creditors might never receive anything. (Mot. at 25 (general creditors may receive no "compensation . . . which may ultimately be the appropriate result in this case . . .").) This result is inequitable. As shown below, the investors were on notice that their promised investment returns were too good to be true, and were thus (at least) on inquiry notice that they were investing in a Ponzi scheme. By contrast, Curtis acted in good faith and had no reason to suspect it was being defrauded.

The Court should deny the Motion. In the alternative, the Court should allow discovery and conduct an evidentiary hearing to test the bona fides of the claims of the alleged "victims."

ARGUMENT

In reviewing a proposed distribution in a receivership, courts have discretion in assessing equitable distributions. SEC v. Great White Marine & Rec., Inc., 428 F.3d 553, 556 (5th Cir. 2005) (citing SEC v. Safety Fin. Serv., Inc., 674 F.2d 368, 372-73 (5th Cir. 1982) (quoting SEC v. Lincoln Thrift Ass'n, 577 F.2d 600, 606 (9th Cir. 1978)) ("It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership."). Thus, this Court has wide latitude in deciding whether any proposed distribution plan is equitable. We submit that the proposed distribution plan is inequitable, and that the Court should deny the Motion.

As the Receiver's Motion admits, the Stanford International Bank ("SIB") "was nothing like a typical commercial bank . . . SIB offered CD rates of return that were significantly higher than those offered by banks in the United States. (citation omitted.) The purported yields from SIB CDs were suspiciously consistent over the years, ranging from a high of 388% of the US yield in 2002 to a low of 140% of the US yield in 2006." (Mot. at 2.) The SEC and the Receiver have repeatedly acknowledged that SIB told investors that the "bank had averaged double-digits [sic] returns on its investments for over 15 years." (*Second Amended Complaint*, at ¶32 [D.E. 490-2]; accord *Receiver's Amended Compl. Naming Relief Defendants*, at ¶ 29, Janvey v. Alguire, No. 3:09-cv-00724-N (N.D. Tex. July 28, 2009) [D.E. 14]; *Receiver's Compl. Against Certain Stanford Investors*, Janvey v. Venger, No. 3:10-cv-00366-O (N.D. Tex. Feb. 23, 2010) [D.E. 1].) CD rates offered by SIB were nearly double what other U.S. banks offered. (*Second Amended Complaint*, at ¶ 51 [D.E. 490-2].)

Investment returns that are so much greater than market and that are therefore highly suspicious are classic red flags that put the Investor CD Claimants on inquiry notice that SIB's investments were suspect, and that the investment could be a fraudulent scheme. See, e.g., In re Vaughan Co., Realtors, 477 B.R. 206 (Bankr. D. N.M. 2012).

In Vaughan, a trustee alleged that investors knew or should have known that a promissory note program was a fraudulent scheme, and that the investors willingly turned a blind eye to red flags – including "unrealistically high" interest rates – that would indicate that they were investing in a fraud. The court held that these allegations were sufficient to state a plausible claim that defendants had actual knowledge of the fraud and subjectively knew that they were participating in a fraudulent scheme:

> Here, Plaintiff has alleged that Defendants knew or should have known that the VCR promissory note program was a fraudulent

> scheme and that the Defendants ***willingly turned a blind eye to several red flags that would indicate that VCR was perpetrating fraud.*** *See* Complaint, ¶¶ 54 — 56, 62. Plaintiffs further allege that such red flags became commonly known by the public at large following the arrest of Bernard Madoff in 2008, and that Defendants nevertheless continued to invest in VCR's note program ***despite the fact that the interest rates the Defendants received were "unrealistically high."*** *See* Complaint ¶ 53. These allegations are sufficient to state a plausible claim that Defendants had actual knowledge of the fraud and subjectively knew that they were participating in a fraudulent scheme.

Id. at 224 (emphasis added).

The situation here is similar. The Investor CD Claimants were seeking unrealistically high returns by investing in SIB's CDs. They closed their eyes to red flags that put them on inquiry notice that the investment was too good to be true. Yet, the Motion seeks to provide them with distributions, while an ordinary creditor – who knew of no such red flags – is to receive nothing.

The proposed distribution would also be inappropriate under Texas law and policy. Under Texas law, upon dissolution, corporations that are winding up are required to pay all liabilities to creditors prior to making any payments to equity holders. See TEX. BUS. ORGS. § 11.053 (2012). Here, given the evident risks involved, and the disproportionate upside the Investor CD Claimants were seeking, those claimants should be viewed no differently than equity holders, and they should not be paid before the creditors.

The Receiver argues that the Investor CD Claimants were more numerous and lost more value than other victims. (Mot. at 1.) But the Receiver does not explain why one group's size and value lost should totally preclude another group's recovery. It should not.

The Receiver also contends, without any factual support, that the proposed distribution plan will provide "resources where they are needed most[.]" (Mot. at 25.) In an effort to buttress this assertion, the Motion states that many of the Investor CD Claimants "are elderly and retired and have no other significant sources of income, [thus] this class of creditors has the most immediate and compelling need for equitable relief from the Court via an interim distribution." (Mot. at 14.) This contention fails for multiple reasons.

First, the Investor CD Claimants are not "creditors." They are investors who made a wager on the performance of the CDs and who turned a blind eye to obvious red flags. Second, the Receiver offers no authority that the distribution of assets should be need-based. It should not. It should be merit-based. Third, the Receiver offers no evidence to support the assertion of need. The Motion provides no evidence of any Investor CD Claimant's age, employment status, income sources, or financial need. The minimum investment for these Investor CD Claimants was $50,000 and, according to an SEC filing, only "accredited investors" were allowed to invest. (Ex. B to Aff. of M. Graif.) "Accredited investors" were individuals whose net worth, or joint net worth with a spouse, exceeded $1,000,000; or whose individual income exceeded $200,000 (or whose joint income with a spouse exceeded $300,000) in each of the two most recent years and could be expected to meet that income in the current year. See 17 C.F.R. § 230.501(a) (2012). Accordingly, people without substantial assets or income were excluded from participation. While we strongly disagree that the investors deserve any preferential treatment, or that financial need is even a valid consideration, in the event the court concludes that hardship cases warrant special privileges, those investors who claim such privileges should have to make an evidentiary showing of hardship and good faith that can be tested through discovery and an evidentiary hearing. Absent such a showing, there is no basis for elevating the claims of one group over the claims of another group of victims.

The Receiver cites to cases that are either outside this jurisdiction, or that are wholly distinguishable from the case at hand for the proposition that the Court should subordinate the claims of general creditors to the claims of defrauded investors.

For example, in CFTC v. PrivateFX Global One, 778 F. Supp. 2d 775 (S.D. Tex. 2011), the court overruled creditor Wells Fargo's objections to the receiver's plan where Wells Fargo had extended a $500,000 line of credit to the defendant that was never repaid. Because Wells Fargo was in the very business of reviewing applications for credit and determining whether they were valid, the court found it "difficult to place Wells Fargo's claim of victimization on the same plane as that of the duped investors." Id. at 787 n.5.

The Receiver cites to SEC v. HKW Trading LLC, No. 05-cv-1076, 2009 U.S. Dist. LEXIS 77215 (M.D. Fla. Aug. 14, 2009) as support for the proposition that courts subordinate the claims of general creditors, even if the result would be to deny general creditors any compensation at all. But in that case, the court favored creditors, like Curtis, over injured investors. The HKW court expressly refused to subordinate a creditor's claim, elevating a creditor's claim over investors' claims, ruling that to decide otherwise would "subordinat[e] . . . unfairly" the creditor's claim. See id. at *15. Here, the Receiver's request, in practical effect, to subordinate Curtis' claim, would likewise result in an unfair and unjust result, and should be denied.[1]

[1] The decision in Quilling v. Trade Partners, Inc., No. 1:03-CV-236, 2007 WL 107669 (W.D. Mich. Jan. 9, 2007) is outside this district and circuit and its holding does not bind this Court. In addition, in contrast to our case, there is no indication in Quilling that the investors saw or ignored red flags. On those facts, it might have been fair and equitable to give the investors an advantage, but there is no reason to do so here where the SEC and Receiver themselves are pointing to the red flags that the Investor CD Claimants ignored.

CONCLUSION

Curtis respectfully requests that this Court deny the Receiver's Motion. Alternatively, Curtis requests that this Court allow discovery and order an evidentiary hearing requiring the Receiver to demonstrate why certain alleged victims should be paid before other victims.

Dated: February 1, 2013
New York, New York

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CERTIFICATE OF SERVICE

On February 1, 2013, I electronically submitted the foregoing document titled Opposition to Receiver's Motion for Approval of Interim Distribution Plan and accompanying Affidavit of Michael Graif to the Receiver's Motion for Approval of Interim Distribution Plan with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5(b)(2).

s/ *Myles K. Bartley*
Myles K. Bartley